

## REMARKS

This amendment is made to correct a typographical errors in the claims. Support for the amendments is found in the specification, for example, at page 8, lines 11-26. Applicants thank the Examiner for bringing these errors to attention.

Claims 1-10 are pending in this application. Restriction has been required as between the following allegedly distinct groups of inventions:

Group I (claims 1, 5, 6 and 7): drawn to a method of reducing severity of a symptom of a virus infection by administering the ISS 5'-C, G, pyr, pyr, C, G-3', and a kit containing said ISS sequence, classified in class 514, subclass 44.

Group II (claims 2 and 8): drawn to a method of reducing severity of a symptom of a virus infection by administering the ISS 5'-pur, pur, C, G, pyr, pyr, C, G-3', classified in class 514, subclass 44.

Group III (claims 3 and 9): drawn to a method of reducing severity of a symptom of a virus infection by administering the ISS 5'-AACGTTTCG-3', classified in class 514, subclass 44.

Group IV (claims 3 and 9): drawn to a method of reducing severity of a symptom of a virus infection by administering the ISS 5'-GACGTTTCG -3' classified in class 514, subclass 44.

Group V (claims 4 and 10): drawn to a method of reducing severity of a symptom of a virus infection by administering the ISS 5'-TGACTGTGAACGTTTCGAGATGA-3', classified in class 514, subclass 44.

Applicants hereby elect Group I (claims 1 and 5-7), with traverse with respect to the restriction between Groups I-V. Applicants expressly reserve their right under 35 U.S.C. § 121

to file a divisional application directed to the nonelected subject matter during the pendency of this application, or an application claiming priority from this application.

Citing M.P.E.P. §806.05(c), the Examiner bases this restriction requirement on the characterization of inventions I and II-V as having a combination-subcombination relationship. Applicants respectfully disagree with this characterization.

Applicants respectfully submit that the claims of the invention clearly have a genus-species relationship. For example, claim 1 is directed to a method of reducing severity of a symptom of virus infection comprising administering a composition wherein the ISS comprises the sequence 5'-C, G, pyrimidine, pyrimidine, C, G-3'. Claims 2-4 are directed to the method of claim 1 using particular species of the ISS genus sequence 5'-C, G, pyrimidine, pyrimidine, C, G-3'. The ISS species of claim 2 includes two purines added to the 5' end of the genus sequence. The ISS of claim 3 are particular species of the ISS of claim 2 and the ISS of claim 4 is a species of the genus sequence of claim 1. In the same way, the kits of claims 8-10 relate to the generic kit of claim 7.

Claims 1 and 7 fall within the general rule that "a generic claim should include no material element additional to those recited in the species claims, and must comprehend within its confines the organization covered in each of the species." Further, "the claims to the species which can be included in a case in addition to a single species must contain all the limitations of the generic claim." M.P.E.P. §806.04(d). The pending claims comply with these guidelines.

The definition of combination/subcombination as set forth in M.P.E.P. §806.05(a) is as follows: "A combination is an organization of which a subcombination or element is a part." Applicants respectfully submit that the pending claims do not fall within this definition.

To support a requirement for restriction under the criteria of M.P.E.P. §806.05(c), the Examiner must show by appropriate explanation one of the following: (a) separate classification,

(b) separate status in the art when they are classifiable together or (c) different field of search.

M.P.E.P. §808.02. Applicants submit that the Examiner has not met this burden.

As indicated, the Examiner has classified all of the groups in the same class and subclass, class 514 / subclass 44. Thus, the claims do not have separate classification. The Examiner has not provided an explanation of how the various groups have a separate status in the art nor has any patents been cited which are evidence of such separate status, as required in M.P.E.P. §808.02.

Although the Examiner states that the search required for Group I is not required for Groups II-V, no support have been given for this statement nor has an explanation been provided to indicate that a different field of search is required. The Examiner asserts that the “subcombination has separate utility such as ISS sequences which can be administered for other types of infections, or instead of being administered alone as set forth in claim 1 can be provide with other antigens.” Office Action, page 4. This, however, does not support a separate field of search since the “indicated field of search must in fact be pertinent to the type of subject matter covered by the claims.” M.P.E.P. §808.02. The pending claims are not directed to administration of ISS for other types of infections nor to administration with antigen. Applicants respectfully submit that the separate utilities suggested by the Examiner are thus not pertinent to the subject matter being claimed.

Thus, Applicants respectfully submit that the Examiner has not provided adequate explanation for characterizing the invention as a combination-subcombination and thus, for dividing this invention. 37 C.F.R. §1.141 provides that a reasonable number of species may claimed in one application.

Accordingly, Applicants respectfully submit that the invention should not be subject to restriction.

## CONCLUSION


Applicants request reconsideration of the restriction requirement and examination of the elected subject matter on the merits. In the event that there are any questions concerning this amendment or the application in general, the Examiner is respectfully urged to telephone the undersigned representative so that prosecution may be expedited.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 377882001600. However, the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,

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